

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF VIRGINIA
BIG STONE GAP DIVISION**

By: James P. Jones
United States District Judge

The defendant Gary Lynn Chambers moves to dismiss the action as to him on the ground that insufficient facts have been pleaded as to his liability. It is alleged

that the other defendant, Marsha Lambert Chambers, was operating the offending vehicle, and that Mr. Chambers, who owned the automobile, “improperly, negligently, and intentionally permitted [her] to operate the vehicle as described herein.” (Compl. ¶ 9.)

A motion to dismiss pursuant to Federal Rule of Civil Procedure 12(b)(6) may be granted only if, accepting all well-pleaded allegations in the complaint as true, and viewing them in the light most favorable to the plaintiff, the plaintiff is not entitled to relief. The court may not dismiss a complaint unless the plaintiff can prove no set of facts which would entitle the plaintiff to relief. *See Conley v. Gibson*, 355 U.S. 41, 45-46 (1957). “The issue is not whether a plaintiff will ultimately prevail but whether the claimant is entitled to offer evidence to support the claims.” *Scheuer v. Rhodes*, 416 U.S. 232, 236 (1974).

It is not necessary to set forth a particular legal theory, but rather a party is required only to make “a short and plain statement of the claim showing that the pleader is entitled to relief.” Fed. R. Civ. P. 8(a)(2). “This simplified notice pleading standard relies on liberal discovery rules and summary judgment motions to define disputed facts and issues and to dispose of unmeritorious claims.” *Swierkiewicz v. Sorema N.A.*, 534 U.S. 506, 512 (2002).

Negligent entrustment of an automobile to an unfit driver likely to cause injury to others is a recognized cause of action in Virginia. *See Turner v. Lotts*, 422 S.E.2d 765, 767 (Va. 1992). While the plaintiff has not described in his Complaint the facts surrounding such entrustment, the defendants have discovery available to them in order to ascertain such facts. Moreover, the rules permit sanctions if the claim has no likely evidentiary support. *See* Fed. R. Civ. P. 11(b)(3).

For these reasons, it is **ORDERED** as follows:

1. The Motion to Dismiss as to the claim of Norma J. Smith is granted and said plaintiff is hereby dismissed as a party; and
2. The Motion to Dismiss as to the claim against Gary Lynn Chambers is denied.

ENTER: December 31, 2002

United States District Judge